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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE CATHODE RAY TUBE (CRT) ANTITRUST
LITIGATION

This Order Relates to:

Individual Case No 11-cv-05514-SC

Sears, Roebuck and Co & Kmart Corp
v Chunghwa Picture Tubes, Ltd, et al.

MDL No 1917

Master Case No 3:07-cv-05944-SC
Individual Case No 3:11-cv-05514-SC

**ORDER RE THOMSON'S MOTION TO
REINSTATE ECF NO 3914 RE SEARS'
PRIVATE LABEL DISCOVERY**

On August 3, 2015, the Thomson Defendants moved to reinstate the July 14, 2015 Report and Recommendation ("July 14, 2015 R&R" or "ECF No 3914") granting in part Toshiba's 9/12/14 motion to compel a response to Interrogatory No 9 by providing the names

1 of the five highest-ranking Sears employees responsible for conducting, implementing or
2 directing Sears' LXI private-label program during the relevant period.

3 Since the July 14, 2015 R&R (ECF No 3914) issued, Toshiba and Sears filed their
4 stipulated dismissal with prejudice of all claims. ECF No 3831. On July 28, 2015, based on the
5 parties' stipulation withdrawing Toshiba's Motion to Compel and requesting denial of the July
6 14, 2015 R&R as moot, Judge Conti denied the July 14, 2015 R&R as moot. ECF No 3938. This
7 order and Sears' refusal to provide the ordered discovery precipitated Thomson's motion.

8 The Discovery Protocol requires coordination of discovery in this multi-district
9 litigation (ECF No 1128). On August 24, 2015, the undersigned issued a report and
10 recommendation construing the Discovery Protocol as allowing parties that remain in the
11 litigation to continue with discovery motions filed by settling parties. That report
12 recommended: "Toshiba's 9/12/14 motion to compel Sears/Kmart to provide additional
13 discovery regarding their private label program" be "deemed pending or at issue
14 notwithstanding the filing party's settlement or withdrawal of its role in the motion." ECF No
15 4015 at 5. On September 11, 2015, Judge Conti adopted ECF No 4015. ECF No 4054. Implicit in
16 the court's adoption of ECF No 4015 was that Toshiba's 9/12/14 motion to compel private label
17 discovery from Sears/Kmart remained pending and that Sears should comply with ECF No 3914.

18 In the meantime, on August 14, 2015, Sears' counsel sent a letter to the
19 undersigned objecting to reinstatement of ECF No 3914 on the ground that "because Sears's
20 relevant interrogatory response that was the subject of Toshiba's motion to compel did
21 incorporate of [sic] the names of the five highest-ranking employees responsible for
22 conducting, implementing, or directing Sears's LXI private-label program during the relevant
23 period, no further action by the Court is necessary, and the Court should deny Defendants'
24 request." Opposition at 1-2. Having reviewed ECF No 3914 and Sears' interrogatory response
25 and incorporated Rule 30(b)(6) testimony, the undersigned understands Sears' position but
26 finds it incorrect.

1 The July 14, 2015 R&R ordered as follows:

2 "Toshiba's motion to compel is **GRANTED** in part. Plaintiffs are ordered to
3 provide the names of the five highest-ranking employees responsible for conducting,
4 implementing or directing Sears' LXI private-label program during the relevant period.
5 Toshiba's motion is **DENIED** in all other respects." ECF No 3914 at 8.

6 Sears correctly contends that its Response to Interrogatory No 9 *refers* to its Rule
7 30(b)(6) deposition testimony: "Plaintiffs further refer [Toshiba] to the Rule 30(b)(6) deposition
8 testimony and to the deposition testimony of Glenna Hess on this exact topic." Exhibit A at 5.
9 But this reference does not respond to the interrogatory's inquiry.

10 The portions of the Rule 30(b)(6) deposition testimony that Sears relies upon fail
11 to disclose the five highest-ranking employees responsible for conducting, implementing or
12 directing Sears' LXI private-label program during the relevant period. Sears' contention that its
13 response "incorporate[d]" the names of the five highest-ranking individuals stretches what, in
14 fact, Sears has provided. Merely incorporating deposition testimony that provides the names
15 of more than five employees having managerial or vice presidential titles simply does not
16 answer the question posed.

17 Contrary to Sears' contention that the information ordered by the R&R has
18 already been provided, a review of Sears' submissions and responses to Interrogatory No 9
19 discloses that the information ordered has not been provided. Sears' opposition does not
20 admit that the five named individuals were the five highest-ranking Sears employees
21 responsible for conducting, implementing or directing Sears' LXI private-label program during
22 the relevant period. If the five named persons are the five highest-ranking Sears employees
23 with such responsibilities during the relevant time period, Sears should so state. Otherwise,
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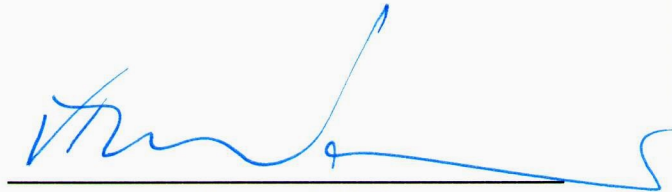
Sears should provide the names of those five highest-ranking employees.¹ Providing those names together with any required explanation in responsive sentences would have been far easier than opposing Thomson's motion.

CONCLUSION

The defendants' motion to reinstate ECF No 3914 (July 14, 2015 R&R) is **GRANTED**. Sears shall serve a supplemental interrogatory response to Interrogatory No 9 as ordered in ECF No 3914 no later than October 15, 2015.

IT IS SO ORDERED.

Date: October 8, 2015



Vaughn R Walker
United States District Judge (Ret)

The Recommended Order of the Special Master is Accepted and Ordered / Denied / Modified.

Date: _____

Honorable Samuel Conti
United States District Judge

¹ The undersigned understands that the term "five highest-ranking employees responsible for" involves some subjectivity in selecting individuals. The point of the ordered interrogatory response is to determine the individuals with the greatest responsibility for Sears' private label program during the relevant period.